

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PATRICIO VICENTE ARTEAGA  
BERREZUETA and AZUNCION ALEJANDRO  
(a/k/a/ RICARDO) ULLAGUARI ASMAL,

Plaintiffs,  
-against-

ROYAL CROWN PASTRY SHOP, INC. (d/b/a  
ROYAL CROWN PASTRY SHOP), *et al.*,

Defendants.  
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**MEMORANDUM AND ORDER**  
No. 12-CV-4380 (FB) (RML)

*Appearances:*

*For the Plaintiff:*

WILLIAM H. PRATT, ESQ.  
GEORGE N. BAUER, ESQ.  
Kirkland & Ellis, LLP  
601 Lexington Avenue  
New York, NY 10022

*For the Defendants:*

TSEDEYE A. GEBRESELASSIE, ESQ.  
HAEYOUNG YOON, ESQ.  
National Employment Law Project  
75 Maiden Lane, Suite 601  
New York, NY 10038

**BLOCK, Senior District Judge:**

On August 20, 2013, Magistrate Judge Robert M. Levy issued a Report and Recommendation (“R & R”) recommending that plaintiffs’ motion for a default judgment as to defendants Royal Crown Pastry Shop, Inc. and Frank Generoso<sup>1</sup> (“defendants”) be

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<sup>1</sup> On July 24, 2013, defendant Frank Generoso (“Generoso”) filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the Eastern District of New York (Docket No. 1-13-44526-NHL), and on September 14, 2013, he listed Plaintiffs’ claims in this action as unsecured, non-priority claims. Pursuant to 11 U.S.C.

granted and that plaintiffs be awarded a total of \$243,428, plus interest. As to Plaintiff Berrezeuta, Magistrate Judge Levy recommended that he be awarded \$41,973 in unpaid minimum wages; \$33,536 in unpaid overtime wages; \$10,066 in spread-of-hours wages; \$37,189 in FLSA liquidated damages; \$28,540 in NYLL liquidated damages; \$1,629 in Wage Theft Prevention Act damages; and \$18,209 in prejudgment interest, with interest accruing through the date of entry of judgment. As to Plaintiff Asmal, Magistrate Judge Levy recommended that he be awarded \$43,371 in unpaid overtime wages; \$4,369 spread-of-hours wages; \$16,932 in FLSA liquidated damages; \$19,666 in NYLL liquidated damages; \$1,657 in Wage Theft Prevention Act damages; \$4,500 in breach of contract damages; and \$13,092 in prejudgment interest, with interest accruing through the date of entry of judgment. The R & R states that “[a]ny objections to this [R]eport and [R]ecommendation must be filed with the Clerk of the Court . . . within fourteen (14) days. Failure to file objections within the specified time waives the right to appeal the district court’s order.” R&R at 14. To date, no objections have been filed.

Where, as here, clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R & R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object

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§ 362(a), an automatic stay is imposed and Plaintiffs therefore cannot pursue their claims against defendant Generoso in this action. Plaintiffs’ claims against defendant Royal Crown Pastry Shop, Inc. are not impacted by the automatic stay.

and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

As no error appears on the face of the Magistrate Judge Levy's R & R, the Court adopts it without *de novo* review. Accordingly, the Court directs the Clerk to enter judgment in accordance with the R&R.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
December 16, 2013